IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9657 of 2004

Between:

Smt. J. Shantha Kumari, w/o K. Veerasham,
O/o GMTD, Adilabad, Adilabad District.

..... PETITIONER

AND

1 The Divisional Manager (Admn), O/o The General Manager (Telecom), Adilabad, Adilabad District.
2 The Deputy General Manager , O/o The General Manager (Telecom), Adilabad, Adilabad District.
3 The Chief General Manager (Telecom), A.P. Circle, Hyderabad.
4 The Central Administrative Tribunal, Hyderabad Bench, Hyderabad, rep. by its Registrar, Hyderabad,

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, especially, one in the nature of Writ of mandamus declaring proceedings No. TA/STA/56/4-11/2003/JSK dated 4-11-2003 as illegal, arbitrary violative of Rule 29(3) of CCS CCA Rules and without any power and consequently set aside the same

For the Petitioner: Mr.R.CH.RAVINDER , Advocate

For the Respondent Nos. Mr.K.Narahari (SC FOR CG)

The Court Made the Following :

HONOURABLE SRI JUSTICE K.C.BHANU

W.P.No.9657 of 2004

O R D E R:

The case of the petitioner is that she was initially recruited as Telecom Operator in the erstwhile Nizamabad Telecom Division. When the Nizamabad Division was bifurcated, the petitioner sought for transfer to Nizamabad, but the same was not accepted by the respondents. Owing to mental depression which resulted in mental disorder, she got herself examined in Gandhi Hospital and the hospital authorities advised her to take rest and issued medical certificate. She was on authorized leave up to 27.3.1984. From 28.3.1984, she submitted her leave application duly enclosing the medical certificate. The Divisional Engineer issued a charge sheet, dated 25.8.1984 under Rule 14 stating that the writ petitioner was unauthorisedly absent from 28.3.1984 to 25.8.1984. According to the

petitioner, the charge sheet was not served on her and she came to know about it only in the year 1996. When she submitted a petition under Rule 29 to the Member, HRD, Telecom Commission, she was removed from service on 5.11.1984. Even that memo was not served on her. Therefore, she could not file an appeal. The Chief General Manager, Telecom, Hyderabad vide his letter dated 11.8.1998, set aside the order of removal as it was passed without holding enquiry and remanded the case to the disciplinary authority to start denovo enquiry from the stage of issuance of charge sheet to the petitioner. With great difficulty, she was reinstated into service on 11.1.1999 and while she was working, the 1st respondent issued a fresh charge sheet to her on 24.1.2001 with new charges. In spite of her protest, the Divisional Engineer continued the enquiry and submitted his report. Basing on the enquiry report, the 1st respondent imposed on the petitioner non-existent punishment of break in service from 28.3.1984 to 10.1.1999. As it was not a prescribed penalty, she submitted an appeal to the 2nd respondent on 4.4.2003 and the same was rejected by him on 12.5.2003. Thereupon, she submitted a review petition to the 3rd respondent on 9.6.2003 ventilating her grievance both on factual and statutory aspects. The 1st respondent instead of answering or considering her review petition, issued show cause notice, dated 4.11.2003 calling upon her to submit explanation why she should not be removed from service. When a statutory petition filed by the petitioner is pending, the Show Cause Notice, dated 4.11.2003 is issued and therefore, the same is not sustainable in the eye of law. Challenging the impugned Show Cause Notice, she approached the Central Administrative Tribunal, Hyderabad, which granted interim direction to the respondents to continue the petitioner in service pending disposal of the Original Application. But the Original Application was dismissed on the ground of jurisdiction and extended the interim orders up to 15.6.2004. Hence, the writ petition.

It is vehemently argued by the learned counsel for the petitioner that when the review petition is pending, the impugned proceedings to enhance the punishment cannot be issued. Therefore, the impugned

proceedings issued by the authority concerned are totally without jurisdiction. Hence, he prays to set aside the impugned proceedings.

On the other hand, the learned standing counsel for the respondents contended that the revisional authority can revise, confirm, reduce, enhance or set aside the penalty imposed by original authority, but when a major penalty is proposed to be imposed, a reasonable opportunity has to be given to the petitioner for making representation to the revisional authority and the impugned proceedings are completely in conformity with the statutory rules governing service conditions of the petitioner and there are absolutely no grounds to interfere with the impugned proceedings. He further contended that the grievances if any can be urged before the revisional authority by giving an explanation. Hence, he prays to dismiss the writ petition.

The law is well settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. Unless some infirmity is pointed out in the proceedings of the disciplinary authority, which may have the effect of violation of principles of natural justice or some illegalities, this Court normally will not interfere. In the decision making process, if the authority deciding the case has ignored the vital evidence or thereby arrived at the erroneous conclusion or has misconstrued the provisions of the rules or misunderstood the scope of its jurisdiction, the constitutional power under Articles 226 of the Constitution of India can be invoked to set such errors and prevent gross injustice to the party complaining.

The factual matrix in this case is not in dispute. For the unauthorized absence of the petitioner in discharging her duties from 28.3.1984 to 25.8.1984, originally, a charge sheet was served on her and she was removed from service on 5.11.1984 but the same was set aside by the Chief General Manager, Telecom, Hyderabad on the ground that the removal order was passed without holding an enquiry. Therefore, the case was remitted to the Enquiry Officer for conducting denovo

enquiry. The Divisional Engineer continued the enquiry and submitted his report. It is also the grievance of the petitioner that a new charge sheet was issued in violation of Rules 126 of P&T Manual. The report of Enquiry Officer was accepted by the disciplinary authority, who imposed a non-existent punishment on the petitioner resulting in break of her service from 28.3.1984 to 10.1.1999 vide its order dated 21.3.2003. Except stating that the said order is in violation of principles of natural justice, nothing has been stated in which manner, the impugned order suffers from violation of principles of natural justice. Against the orders of the disciplinary authority, she filed an appeal before the 2nd respondent on 4.4.2003 and the same was dismissed. Thereupon, the writ petitioner submitted a review petition to the 3rd respondent on 9.6.2003. While the review petition was admittedly pending with the 3rd respondent, the present impugned proceedings have been issued. The petitioner has filed neither a copy of the appeal nor a copy of the revision petition to know whether the Enquiry Officer violated the principles of natural justice or no opportunity was given to her either to participate in the enquiry or to cross-examine the witnesses in departmental enquiry. For the first time, the petitioner complaining that the Enquiry Officer violated the principles of natural justice.

The next ground urged by the learned counsel for the petitioner is that as the review petition is pending before the Chief General Manager, Telecom, A.P. Circle, Hyderabad, who is the revisional authority to revise the punishment, the present proceedings have been issued and the same are without jurisdiction. The present proceedings have been issued under Rule 29(i)(vi) of the CCS (CCA) Rules, 1965. Rule 29(1) reads as follows:

Notwithstanding anything contained in these rules-

i. *the President; or*

ii. *the Comptroller and auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or*

iii. *the Member (Personnel) Postal Services Board in the Government servant serving in or under the Postal Board and {Adviser (Human Resources Develop Department of Telecommunications) in the case of a Government servant serving in or under the Telecommunications Board}; or*

iv. *the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or*

v. *the Appellate Authority, within six months of the date of the order proposed to be (revised); or*

vi. *any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;*

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

a. *confirm, modify or set aside the order; or*

b. *confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*

c. *remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it*

may consider proper in the circumstances of the case; or

d. pass such other orders as it may deem fit:

(Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary).

The above provision makes it clear that the appellate authority can confirm, reduce, enhance or set aside the penalty imposed by the revisional authority, but no order enhancing any penalty shall be made by any revisional authority unless the Government servant concerned has been given a reasonable opportunity of making representation for the penalty imposed. Under Sub-rule (3), an application for revision shall be dealt with in the same manner as if it were an appeal under these rules. Therefore, the above provision clearly shows that the revisional authority can enhance the sentence but the only rider is that when it is proposed to impose any major penalty, a reasonable opportunity of making a representation by the petitioner should be given. Basing on the said provision, the impugned proceedings have been issued, calling for the explanation from the Government servant within ten days from the date of receipt of the said notice. So, the impugned proceedings are completely in conformity with the rules governing the service conditions of the Government employee. So, the contention that the revision petition filed by the petitioner has to be disposed of by the revisional authority and then only the revisional authority can issue the show cause notice to enhance the sentence is totally devoid of merit and

unacceptable. Moreover, it is only a show cause notice calling for the explanation as to why the penalty of removal from service should not be imposed on the petitioner. She has to give an explanation to the Show Cause Notice putting-forth her case.

In view of the above, I do not find any merit in this case and therefore, the writ petition is liable to be dismissed.

However, after issuing of show cause notice, the writ petitioner challenged the impugned proceedings dated 4.11.2003 by filing O.A.No.1389 of 2003 before the Central Administrative Tribunal, Hyderabad wherein the interim suspension was granted and ultimately O.A. was dismissed directing the writ petitioner to file proper petition before appropriate forum, but there was no opportunity to the petitioner for giving an explanation in respect of the impugned proceedings.

Having regard to the facts and circumstances of the case I deem it appropriate that a reasonable opportunity can be given to the petitioner to give an explanation to the impugned proceedings, dated 4.11.2003.

In the result, the writ petition is disposed of directing the writ petitioner to submit her explanation to the impugned proceedings dated 4.11.2003 to the revisional authority within 10 days from the date of receipt of a copy of this order and thereafter, the same shall have to be considered by the revisional authority in accordance with law. In the circumstances of the case, there shall be no order as to costs.

(K.C.BHANU,J.)

6th July, 2004

bcj

To

1 The Divisional Manager (Admn), O/o The General Manager (Telecom), Adilabad, Adilabad District.
2 The Deputy General Manager , O/o The General Manager (Telecom), Adilabad, Adilabad District.
3 The Chief General Manager (Telecom), A.P. Circle, Hyderabad.
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